

**INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
SECTION 1602 TAX CREDIT EXCHANGE PROGRAM
DEPOSIT ACCOUNT CONTROL AGREEMENT**

Borrower's D-U-N-S #_____

THIS DEPOSIT ACCOUNT CONTROL AGREEMENT (the "Agreement"), effective as of this ____ day of _____, 20__, is made by and among the **INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY**, a public body corporate and politic of the State of Indiana, ("Creditor"), **[Borrower]**, organized and existing under the laws of the State of Indiana ("Debtor") and **[Bank Name]** ("Bank").

Recitals

WHEREAS, Bank holds deposit account number **[Account Number]** for Debtor (the "Account");

WHEREAS, Debtor has granted Creditor a security interest in the Account pursuant to that certain Security Agreement dated as of _____, 20__ to secure payment of a debt created pursuant to a loan agreement dated _____, 20__ and executed by Debtor and Creditor (the "Loan Agreement");

WHEREAS Creditor, Debtor and Bank are entering into this Agreement to perfect Creditor's Security Interest in the Account.

Agreement

NOW THEREFORE, in consideration of the following mutual promises, covenants and conditions, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated into this Agreement and made a part hereof as so set forth in their entirety.

2. **Bank's Representations and Warranties.** Bank represents and warrants to Creditor that:

(a) The recitals set forth above are true and correct;

(b) That which is attached as **Exhibit A** is a complete and accurate statement of the Account as of the date thereof.

(c) Bank has not agreed with any party, other than Debtor and Creditor, to comply with instructions concerning the Account and Bank does not know of any claim to or interest in the Account, other than the interests of Creditor and Debtor in any claim of Bank permitted under **Section 3**.

3. **Priority of Lien.** Bank waives any encumbrances, claims and rights of setoff (or recoupment) it may have against the Account and agrees that, except with respect to payment of its fees under the agreement between Debtor and Bank attached as **Exhibit B** (the "Customer Agreement"), it will not assert any banker's lien, encumbrance, claim or setoff against the Account.

4. Control. Bank will comply with instructions concerning the Account given by the Creditor, including but not limited to, instructions to close the Account and transmit the Account balance to Creditor, without requiring the consent of Debtor. Bank will not agree with any other person to comply with that person's instructions concerning the Account given by any person other than Debtor or Creditor.

5. Debtor's Authority to Withdraw. Bank may comply with Debtor's instructions concerning the Account until Creditor notifies Bank that Creditor is exercising exclusive control over the Account. No later than one (1) banking day after Creditor notifies Bank of Creditor's exclusive control, Bank shall stop complying with any instructions given by Debtor. For purposes of this Agreement a "banking day" is any day in which the Bank is open for business to the general public.

6. Statements and Confirmations. Bank will send copies of all statements and other correspondence concerning the Account to Creditor at the address set forth in Section 15, below.

7. Responsibility of Bank. Bank has no liability to Debtor for complying with Creditor's notice of exclusive control or complying with instructions concerning the Account given by Creditor.

8. Tax Reporting. All income, gain, expense and loss recognized in the Account shall be reported to all taxing authorities under Debtor's name and taxpayer identification number.

9. Customer Agreement. The terms of this Agreement will prevail if this Agreement conflicts with any other agreement between Bank and Debtor including, but not limited to, the Customer Agreement. Irrespective of any term of the Customer Agreement, the laws of the State of Indiana shall govern the Account.

10. Termination. The obligations of Bank under this Agreement shall continue until Creditor has notified Bank that Bank is released from further obligation to comply with Creditor's instructions concerning the Account.

11. Complete Agreement. This Agreement sets forth the entire and final agreement and understanding of the undersigned parties with respect to the subject matter contained herein. Any prior agreements, understandings or undertakings, whether written or oral with respect to the subject matter of this agreement, are hereby superseded and replaced by this Agreement.

12. Amendments. No amendment, modification or termination of this Agreement or waiver of any rights shall be binding on any party unless it is in writing and is signed by the party to be charged.

13. Severability. Notwithstanding anything to the contrary contained herein, if any one or more of the provisions of this Agreement shall for any reason whatsoever be held to be illegal, invalid or unenforceable, such illegality, invalidity and unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

14. Successors. The terms of this Agreement are binding upon, and inure to the benefit of, the parties and their respective successors, assigns heirs and personal representatives.

15. Notices. All notices authorized or required herein, shall be in writing, shall be considered given when sent by Registered or Certified Mail, Return Receipt Requested to the parties at their

respective addresses set forth below, and deposited with the U.S. Mail, with the understanding that such address may be changed by giving appropriate written notice to the other parties of such change of address:

Debtor: _____

Creditor: Indiana Housing and Community Development Authority
30 S. Meridian Street, Suite 1000
Indianapolis, IN 46204
Attention: Multifamily Department, Section 1602 Program

With Copy to: Indiana Housing and Community Development Authority
30 S. Meridian Street, Suite 1000
Indianapolis, IN 46204
Attention: General Counsel

Bank: _____

16. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana and any and all disputes hereunder shall be litigated in courts located in Marion County in the State of Indiana.

17. Headings. The headings of the paragraphs herein are for convenience only, and shall not affect the meanings or interpretations of the contents thereof.

(Remainder of page intentionally left blank.)

NON-COLLUSION AND ACCEPTANCE

The undersigned attests, subject to the penalties for perjury, that he/she is the Debtor, or that he/she is the properly authorized representative, agent, member or officer of the Debtor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Debtor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

IN WITNESS WHEREOF, Debtor, Bank and IHCD have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

CREDITOR:
INDIANA HOUSING AND COMMUNITY
DEVELOPMENT AUTHORITY,
a public body corporate and politic of the State of Indiana

By: _____
Sherry Seiwert, Executive Director

Date: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared Sherry Seiwert, the Executive Director of the Indiana Housing and Community Development Authority, who, being first duly sworn, acknowledged execution of the foregoing Account Control Agreement in such capacity as its voluntary act and deed.

Witness my hand and Notarial Seal this ___ day of _____, 20__.

My Commission Expires: _____
Notary Public

My County of Residence: _____
Printed Name

DEBTOR:
[Debtor],
organized and existing under the laws of the State of Indiana

By: _____

Name: _____

Title: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ the _____ of _____, who, being first duly sworn, acknowledged execution of the foregoing Account Control Agreement in such capacity as its voluntary act and deed.

Witness my hand and Notarial Seal this ____ day of _____, 20__.

My Commission Expires:

Notary Public

My County of Residence:

Printed Name

BANK:
[Bank]

By: _____

Name: _____

Title: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ the _____ of _____, who, being first duly sworn, acknowledged execution of the foregoing Account Control Agreement in such capacity as its voluntary act and deed.

Witness my hand and Notarial Seal this ____ day of _____, 20__.

My Commission Expires:

Notary Public

My County of Residence:

Printed Name

1479267_4; BME; 09/24/09

EXHIBIT A

STATEMENT OF ACCOUNT

EXHIBIT B

CUSTOMER AGREEMENT